Satish Kumar Vs. C.B.i.

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Court : Delhi

Decided On : Feb-06-2009

Reported in : 2009CriLJ2716

Judge : Aruna Suresh, J.

Acts : Prevention of Corruption Act, 1988 - Sections 2, 6, 7, 13, 13(1), 13(2), 19, 19(3),19(4) and 27; Prevention of Corruption Act, 1947; Code of Criminal Procedure (CrPC) , 1973 - Sections 161, 173, 313, 465, 465(2) and 482

Appeal No. : Crl. Appeal No. 163/2004

Appellant : Satish Kumar

Respondent : C.B.i.

Advocate for Def. : R.M. Tewari, Adv.

Advocate for Pet/Ap. : Padam Singh,; Bhanu Pratap Singh,; Prem Pratap Singh an

Disposition : Appeal dismissed

Judgement :

Aruna Suresh, J.

1. Under challenge in this appeal is the judgment of conviction and order on sentence of the Special Judge dated 12.02.2004 and 13.02.2004 respectively whereby the appellant was convicted for offences under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act') and was sentenced to undergo Rigorous Imprisonment for one year and pay a fine of Rs. 5,000/- in default to further undergo Rigorous Imprisonment for three months for offence under Section 7 of the Act and was further sentenced to undergo Rigorous imprisonment for one year and six months and pay a fine of Rs. 10,000/- in default to further undergo Rigorous Imprisonment for six months for offence under Section 13(2) of the Act. Substantive sentences were ordered to run concurrently.

2. Appellant was posted as Sub-Inspector at Police Station Nand Nagri in March, 1998. Appellant had arrested Rajesh Kumar in some case registered at Police Station Nand Nagri. Rajesh Kumar happened to be the son of complainant; Smt. Anaro Devi. Complainant had filed a written complaint on 24.03.1998 with C.B.I. alleging that appellant had demanded a bribe of Rs. 4,000/- from her on 23.03.1998 for getting her son released on bail when she had gone to Karkardooma Courts, Shahdara, Delhi on 23.03.1998. She was required to pay bribe money before 30.03.1998. Since she did not want to pay bribe money, she filed the complaint. Accordingly, a case was registered against the appellant and Inspector K. Babu was entrusted with the investigation of the case. A trap was laid at the Police Station Nand Nagri. Appellant received the bribe money of Rs. 4,000/- from the complainant. The currency notes treated with phenolphthalein powder, when washed with solution of Sodium Carbonate, changed their colour to pink. The appellant was arrested after his hand wash and left side pocket of the pant wash also turned into pink. After completion of the investigation, charge-sheet was filed against him.

3. The Special Judge framed charges under Section 7 and 13(2) read with Section 13(1)(d) of the Act against the appellant and conducted the trial of the case. He found sufficient evidence against the appellant and convicted him for the said offences vide his detailed judgment dated 12.02.2004 Aggrieved by the said judgment and order on sentence, the present appeal has been filed.

4. Learned Counsel for the appellant, Mr. Padam Singh, has argued that the trial court erred gravely in not considering the fact that the sanction was not proper and legal as sanctioning authority did not give the grounds of satisfaction, sanction is not a simple formality but is a safeguard to the interest of the public servant against frivolous and vexatious prosecution. The trial court failed to consider that statement under Section 161 Cr.P.C. and report under Section 173 Cr.P.C. were not put up before the sanctioning authority and the sanctioning authority had not scrutinized them nor did he apply his mind before granting sanction and therefore the sanction order being bad in law, the trial court had no jurisdiction to take cognizance of the offence and proceed with the trial of the case.

5. It is submitted by the learned Counsel for the appellant that the validity of the sanction was challenged by the learned defence counsel appearing before the trial court but, the trial court failed to consider the same.

6. Mr. R.M. Tewari, learned APP for the State argued that the sanction order was never challenged by the appellant before the trial court and therefore, appellant cannot be allowed to agitate this issue for the first time in appeal.

7. In para 12 of the judgment, the trial court dealt with the sanction order Exhibit PW-7/A, and observed as follows:

The sanction for prosecution of the accused was granted by P.W.7 Shri S.B.K. Singh, who was posted as D.C.P., North-East District, Delhi. He has proved the order of sanction Ex. PW7/A which he had communicated to S.P., C.B.I., vide his letter E. PW 7/B. The validity of this sanction order has not been challenged during the course of arguments.

8. In para 16 of the judgment, the trial court again observed that appellant had not challenged the factum or validity of sanction for prosecution of the appellant. Thus, it is clear that the appellant did not challenge the validity of the sanction order at any stage before the trial court, not even at the stage of addressing final arguments. He accepted the validity. Therefore the trial court had no occasion to deal with the objections as raised by the appellant in this appeal. Besides, having conceded to the validity of the sanction, the appellant cannot be permitted to

agitate this issue for the first time in appeal.

9. Learned Counsel for the appellant has submitted that even if validity of the sanction order was not challenged before the trial court, the appellant has every right to challenge it in appeal.

10. I do not find much force in these submissions as, Section 19(3)(a) and Section 19(4) of the Act puts restriction on the powers of the appellate court to set aside the conviction on the grounds of absence of, or any error, omission, or irregularity in the sanction required under Section 1 of the said Section, unless the Court is of the opinion that a failure of justice has in fact been occasioned thereby. For determining whether the absence of or any error, omission or irregularity in such sanction has occasioned or resulted in a failure of justice, the court has to have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

11. Section 19(3)(a) and 19(4) read as follows:

19. Previous sanction necessary for prosecution

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974):

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence or, or any error, omission or irregularity in, the sanction required under sub-section(1) unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) xxx xxx xxx xxx

(c) xxx xxx xxx xxx

(4) In determining under Sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

12. A combined reading of Sections 3 and 4 of Section 19 of the Act makes it clear that Section 19 of the Act has an overriding effect on the provision of the Criminal Procedure Code, and hence no finding sentence and order passed by a Special Judge can be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in the sanction required under Sub-section (1), except when in the opinion of that court a failure of justice has in fact been occasioned thereby. Explanation to the Section also becomes relevant and also is of significance as it provides that for the purposes of Section 19, error includes competency of the authority to grant sanction.

13. Coming to the facts of this case, this Court has to take into consideration the fact that the objection to the validity of the sanction was not raised by the appellant in the trial court i.e. at any earlier stage in the proceedings, which is a major factor and therefore puts restriction on this Court to consider the validity of the sanction as challenged. Failure of justice has to be ascertained by the criminal court particularly the superior court by close examination to ascertain whether there was really a failure of justice or it is only a camouflage. Merely because there is an omission, error or irregularity in the matter of according sanction that does not affect the validity of the proceedings unless the court records the satisfaction that such error, omission or irregularity has resulted in failure of justice. Reference is made to State by Police Inspector v. T. Venkatesh Murthy : AIR 2004 SC5117 .

14. In this case as pointed out above, no such objection to the validity of the sanction was raised in the trial court. When the appellant failed to raise the question of valid sanction, the trial proceeded to its logical end by making judicial scrutiny of the entire material and since the case has ended in conviction, there is no question of failure of justice on the mere premise that no valid sanction was accorded for prosecuting the public servant because the very purpose of providing such a check under Section 19 of the Act is to safeguard public servants from frivolous or mala fide or vindictive prosecution was frustrated. Once, the judicial filtering process is over on completion of the trial, the purpose of providing for the initial sanction would bog down to a surplusage. An appellant who did not raise such an objection at the trial stage cannot possibly sustain such a plea made for the first time in the appellate court.

15. In Central Bureau of Investigation v. V.K. Sehgal and Anr. : 1999 CriLJ4593 where no such objection was raised by the respondents at the trial stage and the issue was raised for the first time in appeal and accepted by the appellate court and the order of the appellate court was challenged by the Central Bureau of Investigation by filing this special leave petition, it was observed:

A court of appeal or revision is debarred from reversing a finding (or even an order of conviction and sentence) on account of any error or irregularity in the sanction for the prosecution, unless failure of justice had been occasioned on account of such error or irregularity. For determining whether want of valid sanction had in fact occasioned failure of justice the aforesaid Sub-section (2) enjoins on the court a duty to consider whether the accused had raised any objection on that score at the trial stage. Even if he had raised any such objection at the early stage it is hardly sufficient to conclude that there was failure of justice. It has to be determined on the fact of each case. But an accused who did not raise it at the trial stage cannot possibly sustain such a plea made for the first time in the appellate court. In Kalpnath Rai v. State (through CBI) this Court has observed in para 29 thus: '29. Sub-section (2) of Section 465 of the Code is not a carte blanche for rendering all trials vitiated on the ground of the irregularity of sanction if objection thereto was raised at the first instance itself. The objection has been raised at the earlier stage in the proceedings. It is only one of the consideration to be weighed but it does not mean that if irregularity in the sanction would spoil the prosecution and transmute the proceedings into a void trial.

11. In a case where the accused failed to raise the question of valid sanction the trial could normally proceed to its logical end by making a judicial scrutiny of the entire materials. If that case ends in conviction there is no question of failure of justice on the mere premise that no valid sanction was accorded for prosecuting the public servant because the very purpose of providing such a filtering check is to safeguard public servants from frivolous or mala fide or vindictive prosecution on the allegation that they have committed offence in the discharge of their official duties. But once the judicial filtering process is over on completion of the trial the purpose of providing for the initial sanction would bog down to a surplusage. This could be the reason for providing a bridle upon the appellate and revisional forums

as envisaged in Section 465 of the Code of Criminal Procedure.

16. In the instant case, the Supreme Court also took into consideration, the fact that the Prevention of Corruption Act, 1947 was repealed by the Prevention of Corruption Act, 1988. Under the old Act, the need for a valid sanction for prosecution was incorporated in Section 6 whereas in the new Act of 1988, Section 19 was incorporated and Section 19 of the new Act specifically made provision regarding appeal and revision. Hence, the appeal and revision which were entirely being governed by the provisions of the Code of Criminal Procedure are now being governed by Section 19 of the new Act which contains such provision regarding appeal and revision which is incorporated in Section 27. Section 19(3)(a) of the Act was also interpreted in the following manner:

It is a further inroad into the powers of the appellate court over and above the trammel contained in Section 465 of the Code which has been dealt with supra. Under Section 19(3)(a) no order of conviction and sentence can be reversed or altered by a court of appeal or revision even 'on the ground of the absence of sanction' unless in the opinion of that court a failure of justice has been occasioned thereby. By adding the explanation the said embargo is further widened to the effect that even if the sanction was granted by an authority who was not strictly competent to accord such sanction, then also the appellate as well as revisional courts are debarred from interfering with the conviction and sentence merely on that ground.

17. In view of the proposition of law as discussed above, the appellant cannot be allowed to raise the plea of invalid sanction for the first time in appeal nor this Court is empowered to consider the objection to the validity of sanction raised for the first time in appeal, especially when, the appellant who ought to have raised this plea before the trial court did not raise any such objection at any stage of the proceedings before the trial court. The appellant, therefore, cannot be allowed to agitate that the sanction was improper before this Court especially when, he has failed to show that improper sanction has resulted into failure of justice.

18. Much has been argued by the learned Counsel for the appellant that the sanction was granted in a mechanical manner and the sanctioning authority Shri

B.K. Singh (PW-7) had not applied his mind to his satisfaction that there was no evidence and material on the record which made out an offence under Section 7 and 13(2) read with Section 13 of the Act while granting sanction to C.B.I. to prosecute the appellant. He has also argued that since witness had not brought the sanction file before the Court, the sanctioning authority had no material before it for grant of sanction and he signed the draft proforma of sanction as produced before him by SP, CBI, along with the letter of request.

19. All these submissions are based on presumptions, supposition and conjunctures and are not born out from the record. Shri B.K. Singh, specifically deposed that he had perused the material submitted before him and after having applied his mind, he granted the sanction for prosecution as per order Exhibit PW-7/A under his signatures. He had denied the suggestion that he had signed the draft proforma of sanction sent to him by S.P., C.B.I. along with the letter of request. Simply because, the witness did not bring the file to the Court on the basis of which he had issued the sanction order does not in any manner mean that he had not gone through the material, which of course, included the statement of the witness, the documents collected during the investigation and other material which was necessary to be scrutinized to grant sanction for prosecution.

20. Reference of the learned Counsel for the appellant on Mansukhlal Vitthaldas Chauhan v. State of Gujarat : 1997 CriLJ4059 to support his submission is of not much help to him. In the said case also, it was held that validity of the sanction would depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, materials and evidence have been considered by the sanctioning authority. Consideration implies application of mind. What is required is the order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the court to show that all the relevant files were considered but it is not a must that such file should be placed before the court. It is pertinent to mention here that there was never any request made by the appellant before the trial court to insist upon the sanctioning authority to produce the file which was the basis of grant of sanction for prosecution of the appellant. Rather it is agitated by the

counsel for the appellant that since the file was not produced before the court, there was no file before the sanctioning authority when the sanction was accorded. Mansukhlal case, therefore belies the submissions made on behalf of the appellant. It cannot be presumed that since the file was not produced before the court, it was not produced before the sanctioning authority, the sanction was not valid.

21. Learned Counsel for the appellant has referred to V. Venkata Subbarao v. State : 2007 CriLJ754 to support his submissions that since vital documents showing involvement of the appellant had not been produced before the sanctioning authority, the sanctioning authority had no occasion to apply his mind to the entire material on record and therefore the sanction was invalid. Para No. 23 of the said judgment reads as follows:

It is also accepted that before the sanctioning authority the vital documents showing involvement of MRO had not been produced, the sanctioning authority, therefore, did not have any occasion to apply their mind to the entire material on record and in that view of the matter, the sanction is, therefore, vitiated in law. Conduct of the officers of the respondent who had taken recourse to suppression very de-serves serious condemnation.

22. Thus, it is clear that in the said case, it was accepted in the evidence by the sanctioning authority that vital documents showing involvement of MRO had not been produced and therefore, the court held that sanctioning authority had no occasion to apply its mind to the entire material on record as the same was not before it. The facts before this Court are different. PW-7 has categorically stated that material including the statement of the witnesses under Section 161 Cr.P.C. were read and considered by him and therefore, it was only after applying his mind that he granted sanction to the prosecution to prosecute the appellant under the Act.

23. Learned Counsel has also tried to emphasize that where two views are possible in the prosecution case then the version favourable to the accused should be adopted and since sanction in this case becomes doubtful, the benefit of doubt should be given to the appellant. To support his submissions he has referred to

Sharad Birdhi Chand Sharda v. State of Maharashtra : 1984 CriLJ1738 . This case has no relevance to the present case as it does not relate to sanction. It is a decision on merits of the case where a married woman had committed suicide by taking potassium cyanide and the evidence of the witnesses examined by the prosecution was assessed, sifted and weighed on merits by the court while giving benefit of doubt to the appellant.

24. Under these circumstances, the challenge to the validity of sanction order is not sustainable especially when there is nothing to show that the alleged defect or irregularity in sanction caused failure of justice to the appellant. In Shankerbhai Laljibhai Rot v. State of Gujarat (2004) 13 SCC 487, it was held that in the absence of anything to show that any defect or irregularity in sanction caused failure of justice, the plea of irregular sanction was without substance.

25. Perusal of the sanction order Exhibit PW-7/A makes it clear that the sanctioning authority took into consideration the statement of the witnesses recorded under Section 161 Cr.P.C. by the Investigating Officer and other material placed before him while granting sanction to C.B.I to prosecute the appellant for offences under Section 7 and 13(2) read with Section 13(1)(d) of the Act. Therefore, it cannot be said that the sanction order was unmindful, mechanical and without application of mind. The sanctioning authority had only to see whether the facts stated in the complaint prima facie disclosed the commission of an offence or not. Hence, the sanction order was valid and did not lead to any grave injustice to the appellant even if it suffered from any irregularity or error or omission as alleged.

26. Second limb of the arguments of the learned Counsel for the appellant is that prosecution witnesses have made contradictory statement before the learned trial judge and therefore on the basis of contradictory statements, the trial judge should not have concluded and based its judgment for conviction and sentence of the appellant. The prosecution case does not stand as it failed to prove that there was demand made by the appellant from the complainant for Rs. 4,000/- as gratification for ensuring the release of complainant's son Rajesh Kumar on bail; the trial court also failed to appreciate that the money was lifted by some CBI staff

from behind the trunk kept in the room of the appellant and was not recovered from the possession of the appellant and that the money was kept by the complainant behind the trunk from where it was recovered during the period appellant left his room after talking to the complainant and came back to his room after 10-15 minutes, leaving complainant and Anil Kumar in his room and that therefore, it is a clear case of plantation.

27. Learned Counsel for the CBI has submitted that Section 7 of the Act does not speak of demand as a pre-requisite for its applicability to an offence of gratification committed by a public servant and therefore, no demand was required to be proved by the prosecution and that the ingredients of Section 7 are complete in this case when read with Section 13(1)(d) of the Act. The prosecution has been able to prove complete acceptance of the gratification of Rs. 4,000/- which in itself included and pre-supposed that there was a demand for illegal gratification.

28. Section 7 of the Act makes a public servant punishable for imprisonment and fine as prescribed therein, if such public servant accepts, or agrees to accept, or attempts to obtain from any person for himself, or for any other person any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government Company referred to in Clause (c) of Section 2, or with any public servant, whether named or otherwise. Gratification within the meaning of this section is not restricted to pecuniary gratification or to gratification estimable in money.

29. Section 13 of the Act speaks of acts of a Government Servant which can be said to be criminal misconduct by a public servant. Under Section 13(1)(d) of the Act, if a Government servant by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage is stated to have committed criminal misconduct and is liable for punishment with imprisonment and also fine as prescribed under the said section. Thus, it is clear that prosecution

was not required to prove any demand made by the appellant as gratification for ensuring the release of Rajesh Kumar, an accused arrested by him, on bail as his bail application was to come up for hearing on 30.03.1998.

30. Prosecution has led evidence to prove that appellant had made demand for Rs. 4,000/- on 23.03.1998 when he met the complainant in Karkardooma Court. To prove the presence of the appellant in Karkardooma court, prosecution proved in evidence DD entries dated 23.03.1998 (Ex. PW-5/C and PW-8/D3) of Police Station Nand Nagri. Might be that, the case of the complainant was not listed for hearing on 23.3.1998 but, it was listed for hearing on 24.03.1998. The fact remains, appellant had visited Karkardooma court on 23.03.1998. Complainant would not have known that appellant would go to Karkardooma court on 23.03.1998, unless she herself went to Karkardooma courts for pursuing bail application of her son and met the appellant there. The trial court rightly assessed the presence of the complainant and the appellant at Karkardooma courts on 23.3.1998 in para 21 wherein it observed:

It may be that the complainant has forgotten the purpose for which she had gone to Karkardooma courts on 23rd March, 1998 but from Ex.PW 5/C and Ex. PW 8/D-3, the copies of daily diaries of Police Station Nand Nagri. It is clear that the accused had gone to Karkardooma courts on 23rd March, 1998. When the complainant moved the complaint before the C.B.I. on 24th March, 1998, she could not have known about the movement of the accused unless she had met him on 23rd March, 1998.

31. Therefore to say that prosecution failed to prove any demand made by the appellant is without any substance. As already pointed out above, the prosecution was not required to prove demand of gratification by the appellant before proving the payment of Rs. 4,000/- as gratification.

32. Complaint was lodged by the complainant with CBI on 24.03.1998. As PW-1, complainant has fully supported the prosecution case, minor discrepancies which have been pointed by the learned Counsel for the appellant are of no consequence and do not in any manner adversely affect the prosecution case. PW-2, Hazara Singh was working as peon in Electric Branch, NDMC and was

present at the time of the raid and proceedings conducted thereafter. Though he was declared hostile as he did not fully support the prosecution case he did identify the currency notes which were treated with a chemical powder (he did not disclose the name of the chemical used) and a demonstration having been given by the CBI Inspector to explain the purpose of treating g.c. notes with powder. To some extent he has explained the procedure so demonstrated. He has supported the prosecution case when cross-examined by the learned Counsel for the CBI to the extent of identifying the currency notes which were recovered from the spot. He also admitted that appellant had taken out the piece of cloth in which the currency notes were wrapped from behind the box lying in his office. He also supported the prosecution case that left side pocket of the pant of the appellant and his hands were washed in a fresh water solution of sodium carbonate and also that the recovered money was also dipped in the said solution and the solution turned pink. He also admitted that the currency notes, piece of cloth in which the currency notes were found wrapped when appellant produced them before the CBI Inspector, the hand wash of the appellant and the left side pocket of his pant were treated separately.

33. Similarly, PW-3 Anil Kumar, Electric Khalasi, NDMC, who was also joined as a witness in the pre-raid proceedings as well as during the raid and thereafter partly turned hostile, but has supported the prosecution case on material particulars in his examination in chief. He is hostile only regarding washes which were taken after the recovery of the currency notes, the piece of cloth in which the currency notes were found wrapped, the hand wash of the appellant and also the left side pocket of his pant. He was present at the time when the money was paid by the complainant, Smt. Anaro Devi to the appellant. He has supported the prosecution case to the fact that some conversation had taken place between the complainant and the appellant in his presence and also that complainant took out GC notes of Rs. 4,000/- from her purse and handed them over to the appellant.

34. These two witnesses though did not fully support the prosecution regarding the proceedings, did support the prosecution case on material particulars regarding acceptance of bribe by the appellant and other connected proceedings and therefore, the testimony of these witnesses could be considered and was rightly

considered by the trial court when it found corroboration from the testimony of the complainant and other witnesses (members of the raiding party). The Trial court had considered the observations made in Sat Paul v. Delhi Administration : 1976 CriLJ295 to reach to a conclusion that the credibility of witnesses 2 and 3 had not been completely shaken and after considering the evidence of these witnesses as a whole with due caution and care in the light of evidence of other witnesses available on the record, validly accepted only that part of the testimony which it found to be creditworthy of being acted upon.

35. Learned Counsel for the appellant has tried to submit that PW-2 and 3 namely Hazara Singh and Anil Kumar are stock witnesses of the police but there is no such suggestion to the witnesses in their cross-examination that they were stock witnesses for the prosecution and therefore were interested witnesses. It is pertinent to keep in mind that both these witnesses did not fully support the prosecution case and had to be cross-examined by the learned Counsel for the CBI on certain aspects of the pre-raid and post-raid proceedings which were conducted in their presence. The trial court did look for independent corroboration before convicting the appellant in this case. The witnesses of the raiding party included Hazara Singh and Anil Kumar, two independent witnesses, the rest were all police officials. Under these circumstances, it cannot be said that prosecution has not been able to produce enough evidence to prove that Rs. 4,000/- were handed over to the appellant and the conviction of the appellant was not sustainable.

36. Proposition of law as laid in Ram Prakash Arora v. The State of Punjab : 1972 CriLJ1293 and Som Prakash v. State of Punjab : 1992 CriLJ490 as referred to by the learned Counsel for the appellant is not in dispute.

37. As regards submission of the learned Counsel for the appellant that the recovery of money was planted upon the appellant by the complainant, the trial court had called for the piece of cloth (Ex. P 58), described as handkerchief by some witnesses and examined it. It observed in para 15 of the judgment:

During the course of arguments, I also called for the piece of cloth which has been described by some witnesses as 'handkerchief'. The said piece of cloth in which

the currency notes were recovered and which is Ex. P-58 is a cream coloured cloth measuring about 2' ft. X 1 ft. having white flowers printed on it. It is certainly not a handkerchief. It appears to be a piece of cloth torn from a larger piece.

38. The trial court assessed the evidence of the witnesses before it came to the conclusion that a doubt was raised by the appellant by introducing the handkerchief with the complainant but could not successfully prove it especially when once it was proved that the money had been accepted by the accused, there could be no occasion for the complainant to put the money behind the box. It is pertinent that no suggestion was made to the witnesses that the currency notes were kept behind the trunk in the absence of the appellant by the complainant.

39. Testimony of the witnesses indicate that GC notes were wrapped in a green colour handkerchief and the said packet was kept in a purse and was handed over to the complainant and complainant was not allowed to take any other thing with her. In other words, complainant was allowed to carry with her the purse, GC notes and the green handkerchief containing said notes. The cloth in which GC notes were recovered and was produced by the appellant himself from behind the trunk was found to be a piece of cloth which measured 2' ft. X 1 ft. It was found to be of cream colour having white flowers printed on it and it certainly was not a handkerchief. The trial court observed that it appeared to a piece of cloth torn from a larger piece. Therefore the doubt raised by the appellant that the currency was planted upon him by the prosecution, especially by the complainant, when he had left his office after having conversed with the complainant leaving her and PW-3, Anil Kumar and came back after 10-15 minutes stood demolished from the evidence as adduced on the record. The green colour handkerchief along with other cloth wrappers was exhibited in evidence as P-54 to P-57. The piece of cloth in which the tainted money was found wrapped is Ex. P-58. The trial court dealt with this issue in para 28 of its judgment in detail:

The cloth in which the money was found wrapped at the time of recovery, is a cloth measuring 2' X 1'. It cannot be described as a handkerchief by any stretch of imagination. The said piece of cloth appears to be a piece torn out from a bed sheet. The purse, in which the complainant carried the currency notes, has been

described in the handing over memo Ex. PW 1/B as 'a small leather lady's hand-purse'. Apparently, it was a small purse of the type of the ladies which they usually carry in their hands and not a shoulder-bag or a large purse. It would not have been possible to keep the cloth in which the money was recovered in that purse. Even otherwise, we find that the cloth, from which the money was recovered, was shown to P.W.1 Smt. Anaro Devi (complainant), P.W. 2 Hazara Singh, P.W.3 Anil Kumar and P.W. 8 Inspector K. Babu by the accused during cross-examination, and none of these witnesses stated that this was the same cloth in which the money was wrapped and kept by the complainant in her purse. None of these witnesses have said that this cloth was carried by the complainant with her at the time of the trap. No such specific question has been put to any of these witnesses by the accused. Apparently, the cloth Ex. P-58 was not in possession of the complainant at any time and she could not have kept the money behind the box wrapped in that cloth. P.W. 3 Anil Kumar remained with the complainant till the money was accepted by the accused. He has not stated anywhere that the complainant had any occasion to put the money behind the box. Once it is proved that the money had been accepted by the accused, there could be no occasion for the complainant to put the money behind the box. The accused has tried to raise some doubts by introducing a handkerchief with the complainant. It is now well-settled that the accused is not entitled to the benefit of every doubt raised by the accused. The doubts have to be reasonable and substantial to give the benefit to the accused.

40. The trial court therefore assessed the evidence adduced on the record in the right perspective when it observed that cloth Ex. P-58 was not in possession of the complainant any time and she could not have kept the money behind the box wrapped in that cloth.

41. Learned Counsel for the appellant has submitted that appellant is entitled to benefit of doubt because the tape-recorded version could not be played before the court. These submissions are without any force. It has come in evidence that the tape recorder version could not be played before the court because no such version could be recorded at the spot due to some system failure. This fact also found corroboration from the documents prepared at the spot by the Investigating

Officer. Under these circumstances, appellant cannot claim any benefit of doubt simply to seek his acquittal. No adverse inference can be drawn against the prosecution because of the failure of the recording system.

42. Learned Counsel for the appellant submitted that V.A. Mittal, the Investigating Officer was not examined and his non-examination is fatal to the prosecution case. Therefore he has argued that appellant is entitled to benefit of doubt and acquittal especially when CBI Inspector, Shri K. Babu was trap laying officer and was a member of the trap party and therefore, was the complainant in this case and he could not be the investigating officer.

43. Learned Counsel for the CBI has submitted that complainant in this case was Smt. Anaro Devi and not the Investigating Officer. PW-8, Shri K. Babu was also the Investigating officer of this case, being the head of the raiding party. Therefore, non-examination of V.A. Mittal is not fatal to the prosecution case in any manner.

44. I fully agree with the contentions of the learned Counsel for the State. Mr. V.A. Mittal, the Investigating Officer had only completed the left over formalities of the investigation whereas, Inspector K. Babu, P.W. 8 had conducted the pre-raid as well as the post-raid proceedings. It was he, who heard the cassette and found nothing recorded therein due to system failure, prepared the site plan under his signatures, prepared all the recovery memos and other related memos of pre-trap and post-trap proceedings, recorded the statement of the complainant and other independent witnesses, took into possession the photocopies of the extracts of daily dairy dated 23.03.1998 to 24.03.1998. It was only thereafter that the investigation was transferred to Inspector Mr. V.A. Mittal. Inspector K. Babu as PW-8 also proved the supplementary statement of the witnesses recorded by Mr. V.A. Mittal, his own statement and other police officials and receipt memo Ex. PW-8/C. Mr. V.A. Mittal could not be examined by the prosecution because he was posted in Bosnia and the court had accorded permission to the prosecution to re-examine K. Babu, PW-8 to prove on record the evidence collected by Mr. V.A. Mittal, vide its order dated 26.03.2003. I must also state here that no such objection was raised by the appellant before the trial court and this line of argument has been adopted for the first time in the appeal.

45. Learned Counsel for the appellant has also challenged the legality and validity of the judgment on the ground that there was previous enmity between the complainant and the appellant and therefore, the complainant falsely implicated him in this case and this fact was not taken into consideration by the trial court. Pertinently no such defence was raised by the appellant nor any such argument was put forth by the counsel for the appellant before the trial court. Even in his statement, under Section 313 Cr.P.C., the appellant has not uttered a single word about any previous enmity between him and the complainant for his false implication in this case.

46. Appellant had examined himself as his own witness and tendered in evidence documents Ex. D-1 to D-4 pertaining to case FIR No. 478/1996 Police Station Nand Nagri. Rajesh, son of the complainant was one of the accused and the appellant was the Investigating Officer of the said case. Perusal of these proceedings indicate that appellant was examined on 24.02.1998 in the said case and was cross-examined on 10.03.1998 i.e. prior in time of the meeting of the complainant with the appellant when demand for Rs. 4,000/- was made. Since she was not ready to pay the demanded money she made a complaint on 24.03.1998 to the CBI. Besides these documents, there is no evidence to indicate that complainant harboured any grudge or ill-will against the appellant because of his being Investigating Officer in another case of 1996, in which her son was facing trial and it was with vengeance that she filed a complaint before the CBI with the allegations of demand of gratification by the appellant to ensure the release of her son on bail. Since the said case was pending trial and complainant had already been examined and the case was to be decided by the trial court after conclusion of the trial on merits appellant attributed malice and animus against the complainant for his impleadment in this case. In such like cases, there cannot be any malice or animus. Therefore, the plea of the appellant that complainant had a malice or animus against him to involve him falsely in this case is not sustainable. In State of Maharasthra v. Ishwar Piraji Kalpatri and Ors. : 1996 CriLJ1127 where a petition under Section 482 Cr.P.C. was filed seeking quashing of criminal proceedings at the initial stage on the ground of mala fides or animus of complainant or prosecution on the basis of previous criminal cases pending adjudication against the respondents, it was observed:

In fact, the question of mala fides in a case like the present is not at all relevant. If the complaint which is made is correct and an offence had been committed which will have to be established in a court of law, it is of no consequence that the complainant was a person who was inimical or that he was guilty of mala fides. If the ingredients which establish the commission of the offence or misconduct exist then, the prosecution cannot fail merely because there was an animus of the complainant or the prosecution against the accused. Allegations of mala fides may be relevant while judging the correctness of the allegations or while examining the evidence. But the mere fact that the complainant is guilty of mala fides, would be no ground for quashing the prosecution. In the instant case, specific averments of facts have been made whereby it was alleged that the respondent had disproportionately large assets. Mala fide intention of the appellant in launching prosecution against the respondent with a view to punish him cannot be a reason for preventing the court of competent jurisdiction from examining the evidence which may be led before it, for coming to the conclusion whether an offence had been committed or not. Allegations of mala fides were also made in P.P. Sharma case against the informer. It was held by this Court that when an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot be itself be the basis for quashing the proceedings.

47. Since appellant has failed to place any evidence on the record to show any animus or mala fides on the part of the complainant in filing this complaint against him except the pendency of trial of a case registered two years prior to the filing of this complaint involving her son, would not make out a ground for setting aside the conviction of the appellant.

48. The menace of corruption has enormously increased in various departments of the Government. Corruption in a civilized society is a serious disease like cancer which if not detected or checked in time is sure to maliganise the polity of the country leading to disastrous consequences. Corruption not only adversely affects the public but it also affects the economy of the country and destroys the cultural

heritage. Therefore it is the need of the day that corruption is nipped in the bud at the earliest to ensure and maintain healthy, effective and vibrating socio-economic political system.

49. The prosecution has been able to bring home the guilt of the appellant that, he accepted Rs. 4,000/- as gratification from the complainant as a bargain to ensure the release of the complainant's son Rajesh Kumar on bail as his bail application was likely to come up for hearing before the concerned court on 30.03.1998. The ingredients of Section 7 and 13(2) read with Section 13(1)(d) of the Act are complete in this case and acceptance of gratification included the demand for the said amount of Rs. 4,000/-. I do not find any illegality or infirmity in the impugned judgment and order on sentence of the trial court. The trial court has assessed the entire evidence on record in the right perspective and upon proper analysis has given a rational and sound reasoning while convicting the appellant of the offences charged with. Hence, I find no merit in this appeal. The same is accordingly dismissed.

50. The appellant shall surrender himself before the trial court within a week from the date of this order to undergo substantive sentences of imprisonment as imposed upon him. The fine of Rs. 15,000/- has already been paid in the trial court on 13.02.2004 vide receipt No. 706323 as per the proceedings recorded by trial court in its order dated 13.02.2004

51. The Trial court record be sent back immediately.